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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 ANTHONY D. DAVIS,

12 Petitioner,

13 v.

14 RON HAYNES,

15 Respondent.

CASE NO. 19-cv-5192-RJB-JRC

ORDER DENYING MOTION FOR  
RELIEF FROM JUDGMENT

16 THIS MATTER comes before the Court on Petitioner's Motion for Relief from  
17 Judgment. Dkt. 27. The Court has considered the motion and the remainder of the record herein.  
18 For the reasons set forth below, the motion should be denied.

19 In 1986, Petitioner was convicted in Pierce County of first-degree burglary, second-  
20 degree attempted robbery, first-degree burglary, and second-degree theft. Dkt. 17. In 2015,  
21 Petitioner filed a habeas petition ("First Petition") in this Court seeking relief from the 1986 state  
22 convictions. *See Davis v. Glebe*, 3:15-cv-0092-BHS-KLS, Dkt. 6. In the First Petition, Petitioner  
23 raised grounds of an unlawful plea agreement and exceptional sentence. *Id.* The court denied the  
24

1 First Petition, finding that Petitioner’s 1986 conviction was fully expired because it was used to  
2 enhance his 1995 conviction, by plea, of first-degree rape. *Id.* at Dkt. 18.

3 In 2019, Petitioner filed another petition (“Second Petition”) raising the same grounds for  
4 relief as his First Petition. Dkt. 17. United States Magistrate Judge J. Richard Creatura’s Report  
5 & Recommendation (“R&R”) recommended that the Second Petition should be denied without  
6 prejudice as successive and that the certificate of appealability should be denied. Dkt. 19. On  
7 May 28, 2019, the Court adopted the R&R, dismissing without prejudice the Second Petition as  
8 successive and holding that a certificate of appealability shall not be issued. Dkt. 21. Judgment  
9 dismissing the case was filed on May 29, 2019. Dkt. 22.

10 On June 3, 2019, Petitioner filed a Notice of Appeal. Dkt. 23. On December 19, 2019, the  
11 Ninth Circuit Court of Appeals filed a Mandate denying Petitioner’s certificate of appealability.  
12 Dkt. 26.

13 On December 31, 2019, Petitioner filed the instant Motion for Relief from Judgment.  
14 Dkt. 27. Petitioner’s motion requests that the Court release him from custody for the 1986  
15 convictions. Dkt 27. Petitioner requests that he be released from custody under Fed. R. Civ. P.  
16 60(b)(5).

17 Rule 60 provides, in part:

18 (b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR  
19 PROCEEDING. On motion and just terms, the court may relieve a  
20 party or its legal representative from a final judgment, order, or  
21 proceeding for the following reasons:

22 ....

23 (5) the judgment has been satisfied, released, or discharged; it  
24 is based on an earlier judgment that has been reversed or  
vacated; or applying it prospectively is no longer equitable[.]

Fed. R. Civ. P. 60(b)(5).

1 “A motion under Rule 60(b) must be made within a reasonable time.” Fed. R. Civ. P. 60(c)(1).

2       Petitioner’s untimely motion is an attempt to rehash claims from the First Petition. The  
3 Court has already determined that Petitioner’s claims are successive. The Court declined to issue  
4 Petitioner a certificate of appealability, and the Ninth Circuit Court of Appeals denied his request  
5 for a certificate of appealability. This case is closed.

6       Therefore, Petitioner’s Motion is **DENIED** and a Certificate of Appealability is  
7 **DENIED.**

8       **IT IS SO ORDERED.**

9       The Clerk is directed to send uncertified copies of this Order to United States Magistrate  
10 Judge J. Richard Creatura, all counsel of record, and to any party appearing *pro se* at said party’s  
11 last known address.

12       Dated this 23<sup>rd</sup> day of January, 2020.

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15 ROBERT J. BRYAN  
16 United States District Judge  
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